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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 1, 2003

Ms. Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th St , S.W.
Washington, D.C. 20054

Re: A Response to the State Cable Channels' Arguments Against Full
Digital Multicast Must-Carry
CS Docket No. 98-120

Dear Ms. Dortch:

Another autumn has descended on Washington and broadcasters still await the Commission's decision on full digital multicast must-carry. The Commission now has been reviewing full digital multicast must-carry for almost three years, and the delay has done nothing but damage the long-term health of the broadcasting industry. **Full digital multicast must-carry must be ordered now if the Commission is to carry out Congress's charge and protect the future of free over-the-air broadcasting for all Americans.**

At this point, the record in this proceeding unequivocally demonstrates that:

- Multicasting is the future for a great number of broadcasters in the digital world, particularly for independent stations, public broadcasters, religious stations, emerging networks, and some network-affiliated stations.
- Without full digital multicast must-carry, there will be no DTV transition.
- The cable industry has refused to negotiate reasonable carriage agreements for digital broadcast signals. The strategy of relying on voluntary agreements for DTV carriage has failed.
- Full digital multicast must-carry is consistent with the terms of the 1992 Cable Act.
- Full digital multicast must-carry can be implemented by the FCC without congressional action.

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- Full digital multicast must carry is defensible in court and will withstand constitutional review.
- Full digital multicast must-carry will increase the number of local programming channels on cable without any increase in cable rates

Despite the copious evidence showing the need for multicast must-carry, the cable industry's campaign against it continues apace. The more vigorously they press their arguments, however, the less persuasive those arguments become.

For example, last week the Commission received visits from representatives of three state cable public affairs channels and C-SPAN.¹ The ostensible reason for these visits was to express concern that these channels would be dropped from local cable systems if the Commission orders full digital multicast must-carry. If the cable industry were truly interested in serving the public interest, it might consider recommending that operators drop their eighth HBO channel or their twenty-fourth pay-per-view movie channel before dropping C-SPAN or a local cable news or public affairs channel. The cable industry's position on multicast must-carry, however, has nothing to do with the public interest and everything to do with maintaining their dominance of the video delivery market by thwarting broadcasters' attempts to compete.

BANDWIDTH LIMITATIONS WILL NOT FORCE CABLE OPERATORS TO DROP LOCAL CABLE PROGRAMMING IF THE COMMISSION ORDERS FULL DIGITAL MULTICAST MUST-CARRY.

The State Cable Channels' visit to Washington is just another facet of the cable industry's disingenuous "bandwidth scarcity" argument, which is designed to defeat multicast must-carry by distorting the truth. The cable industry continues to argue to the Commission that if it orders multicast must-carry, cable operators will be required to drop many of the programming services that they currently offer. To complete this threat, the cable industry sent in representatives of the few public interest-oriented channels that they fund and carry to put the best face on the program services that supposedly will be dropped to accommodate broadcasters' DTV signals. The Commission should not be fooled.

The cable industry's dire warnings about dropping local public affairs programming in the wake of multicast must-carry echo the same claims they made in 1992 when

¹ The state cable channels represented at the meetings addressed in this letter included representatives of The California Channel, Pennsylvania Cable Network, and Michigan Government Television (collectively, the "State Cable Channels").

Congress enacted *must-carry*. History has shown, however, that even with *must-carry*, cable operators have expanded the amount of public affairs programming through the addition of a second and in some markets a third C-SPAN channel. Likewise, the State Cable Channels apparently have thrived under *must-carry*, and they will continue to thrive under *multicast must-carry*.

Why? Because the obvious explosion in cable bandwidth and the development of compression technologies have all but eliminated concerns about the sufficiency of available cable bandwidth. The 1992 Cable Act, which was upheld by the Supreme Court less than six years ago permits the use of up to 33% of cable bandwidth for *must-carry* stations, a threshold that rarely, if ever, has been reached, and thanks to cable capacity increases, probably never will be. Even if cable operators' bandwidth concerns had some basis, however, PCC and others have shown repeatedly that **multicast must-carry will reduce the long-term burden on cable bandwidth**. Carrying the entirety of a broadcast stations' multicast DTV program stream takes as little as 3 MHz of cable bandwidth, whereas carriage of the analog stream takes 6 MHz. Thus, full digital multicast *must-carry* will leave more, not less, cable bandwidth for public affairs programming, if cable operators choose to carry it. It is impossible to understand cable operators' resistance to this bandwidth savings as anything other than the next point of attack in their relentless attempt to preserve their dominant position in the video delivery industry rather than promoting the public interest.

Finally cable operators are unlikely to drop the State Cable Channels, C-SPAN, or any other state and local public affairs programming because most of these channels are carried as a condition of their freely negotiated franchise agreements with local municipalities. These agreements often require that a certain amount of bandwidth be set aside for local public affairs programming. Accordingly, even if *multicast must-carry* forced cable operators to drop programming – which it will not – cable operators are highly unlikely to drop their local public affairs programming.

It is important that the Commission not be misled by the cable industry's half-truths and regulatory gamesmanship because the future of over-the-air broadcasting is increasingly threatened. As Chairman Powell noted recently in his op-ed piece in the Wall Street Journal, the prospects for over-the-air broadcasting are at best uncertain and at worst in peril. As the DTV transition drags on, broadcasters, who already have been required to build expensive new digital facilities, now are required to maintain resource-draining dual operations indefinitely, despite the fact that almost no one currently can view their DTV signals. As cable channels have continued to erode broadcasters' market share, the traditional single-channel, over-the-air broadcasting business model has become less and less viable. Without mandatory cable carriage of their full DTV signals, however, broadcasters lack access to enough viewers to experiment with alternative DTV business plans. In short, the television broadcasting industry must change, but without full digital *multicast must-carry*, it cannot do so.

THE CABLE INDUSTRY CANNOT BE DEPENDED UPON TO SERVE THE PUBLIC INTEREST.

The cable industry is free to issue thinly veiled threats to drop the small amount of public affairs programming cable operators air because they operate without any obligation to serve the public interest. Conversely, broadcasters everywhere are required to serve their local communities by airing programming designed to meet local interests and needs. The history of the video delivery industry shows that it has been broadcasters that have supplied local communities with depended-upon local news, informational, and public affairs programming. Examples of such service from the cable industry are notable because they are rare.

Curiously, the article that the State Cable Channels submitted with their *ex parte* letters unmistakably demonstrates cable operators' ambivalence towards airing public interest programming. In the article, the founder of the Connecticut Network explains that local public affairs channels do not exist in more states because they generate little to no revenue. Essentially, the article says that if state and local governments provide funding, cable operators may make available some of their spare bandwidth to accommodate public affairs cable programming. In the case of the Connecticut Network, the article even discusses the possibility of a state-government imposed cable tax rate increase to help pay for coverage of the local and state legislature.

With all due respect to the fine public services that state and local cable channels provide, imagine the uproar if broadcasters suggested that state governments should contribute some of the funding for local news. Still worse, imagine if broadcasters suggested a tax increase to subsidize their public affairs programming. These ideas are laughable, and no broadcaster would suggest them. For cable operators however, expecting the public to foot the bill for programming and then threatening to pull that programming if the FCC orders additional must-carry requirements is just business as usual.

The Commission simply cannot count on cable operators to adequately serve the local needs and interests of communities across America. Fortunately, the Commission need not count on cable operators for this purpose so long as over-the-air broadcasting remains viable. **But the only way to ensure the long-term viability of over-the-air broadcasting is by requiring full digital multicast must-carry now.** By ordering full digital multicast must carry, the Commission also would greatly expand broadcasters' opportunities to provide service to their local communities, to increase diversity, and to expand political discourse. The Commission could be certain that every channel of broadcast programming would conform to the Commission's and Congress's requirements that broadcasters operate in the public interest. Thus the Commission's mandate to regulate the nation's airwaves in the public interest would be fulfilled, and viewers would be guaranteed programming that serves their needs.

THE PUBLIC INTEREST DEMANDS FULL DIGITAL MULTICAST MUST-CARRY.

The preservation of over-the-air programming and improved television service to all Americans are two of the Commission's most important objectives. Full digital multicast must-carry will serve those objectives by (1) increasing the amount and diversity of over-the-air broadcast content, including foreign language, faith-based, public broadcasting and other local programming designed to reach currently underserved groups; (2) increasing the amount of local and public affairs programming available free over-the air, thereby increasing local diversity; (3) exerting downward pressure on cable rates by providing viewers with a free multichannel alternative to cable and DBS; and (4) providing more chances for broadcasters and program producers to rise out of the gutter inhabited by too much of today's available video programming. The Commission's opportunity to use multicast must-carry to increase the level of competition, localism, diversity, and quality in the video delivery market is truly historic.

This opportunity, however, will not last forever. The longer the Commission waits, the weaker over-the-air broadcasting becomes. Accordingly, we strongly encourage the Commission to place this item on its agenda for its November monthly meeting so that the issue can be decided this year. The public interest would be best served if we can begin the new year under a must-carry regime that guarantees all Americans full access to all broadcasters' free over-the-air programming.

Sincerely,



Lowell W. Paxson
Chairman and CEO
Paxson Communications Corporation

cc: Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein
Paul Gallant
Jordan Goldstein
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